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OFFICE OF GENERAL
COUNSEL

303 E. Broad Street
Columbus, OH 43215

September 20, 2010

Office of General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, DC 20463

MUR # 6383

Dear General Counsel,

Enclosed please find one original and three copies of a Complaint filed by Mr. Dan La Botz, the Socialist Party of Ohio candidate for United States Senate in Ohio, against a consortium of eight news organizations in Ohio and Rob Portman and Lee Fisher, the Republican and Democratic candidates for United States Senate. Mr. La Botz alleges a pretty straight-forward violation of the FECA, that is, the news consortium of eight corporate members, Lee and Fisher, did not establish any criteria at all for the debates. Mr. La Botz reportedly, up until the filing of this Complaint, has attempted to learn the criteria in an effort to satisfy whatever standards were imposed. The news Respondents, ONO and its corporate members, have steadfastly refused to reveal any objective standards.

Because the debates are scheduled to begin in the first week of October 2010, and given the clear nature of the violation, Mr. La Botz respectfully requests that the General Counsel expedite these proceedings and seek either conciliation with the Respondents or a preliminary injunction in federal court so that he might participate in these important debates.

Mr. La Botz's mailing address, which is listed in ¶ 2 of the Complaint, is: Dan La Botz, Cincinnati, OH 45220. Mine is on the letterhead. Please let me know if there is anything I can do to assist in this process.

Sincerely,

Mark R. Brown
Attorney-at-Law
614-236-6590
mbrown@law.capital.edu

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RECEIVED
FEDERAL ELECTION
COMMISSION

FEDERAL ELECTION COMMISSION

2010 SEP 21 PM 12:06

OFFICE OF GENERAL
COUNSEL

In the matter of:

→ OHIO NEWSPAPER ORGANIZATION;
THE TOLEDO BLADE; THE (CANTON) REPOSITORY;
THE (CLEVELAND) PLAIN DEALER; THE
COLUMBUS DISPATCH; THE CINCINNATI
ENQUIRER; THE DAYTON DAILY NEWS; THE
AKRON BEACON JOURNAL; THE (YOUNGSTOWN)
VINDICATOR; ROB PORTMAN; and LEE FISHER

MUR NO. 6383

COMPLAINT

1. Dan La Botz, the 2010 Socialist Party of Ohio candidate for the United States Senate in Ohio, brings this Complaint to the Federal Election Commission (hereinafter, FEC or "Commission") against the Ohio Newspaper Organization (ONO), a for-profit association of eight for-profit corporations organized under the laws of the State of Ohio, Rob Portman, the Republican Party's candidate for the United States Senate in Ohio, and Lee Fisher, the Democratic Party's candidate for the United States Senate in Ohio, for violations of the Federal Election Campaign Act (FECA).

COMPLAINANT

2. Dan La Botz is the Socialist Party of Ohio's candidate for Ohio's 2010 United States Senate seat. He is qualified under Ohio law for the 2010 general election ballot and will be formally listed on Ohio's ballots throughout the state as the Socialist Party of Ohio's candidate for United States Senate. He is running against Lee Fisher, the Democratic Party nominee, Rob Portman, the Republican Party nominee, Eric Deaton, the Constitution Party's nominee, and Michael Pryce, an independent, for the United States Senate in Ohio. Mr. La Botz's mailing address is: Dan La Botz, Cincinnati, OH 45220.

RESPONDENTS

3. The Ohio Newspaper Organization (ONO) is a for-profit, unincorporated business association consisting of the eight largest newspapers in Ohio. These eight newspapers are all for-profit corporations organized under the laws of Ohio, and all benefit financially from the operations of ONO. The ONO's purpose is to share news stories between its eight members and jointly participate in reporting the news for the profit of its members. ONO's members are all jointly financially vested in ONO's decisions and actions, and all jointly profit from ONO's decisions and actions. ONO's and its eight members sponsorship of the senatorial debates

between Rob Portman, the Republican candidate, and Lee Fisher, the Democratic candidate, benefit ONO and its eight members financially by creating news and increasing readership.

4. The Toledo Blade, the (Canton) Repository, the (Cleveland) Plain Dealer, the Columbus Dispatch, the Cincinnati Enquirer, the Dayton Daily News, the Akron Beacon Journal, and the (Youngstown) Vindicator are the eight corporate members of ONO. All of these news organizations participate in ONO's decisions, all are financially benefitted by ONO's decisions, and all are individually and jointly responsible for ONO's actions. The mailing addresses of the eight corporate news organizations joined in a business association known as ONO are:

The Akron Beacon Journal
44 East Exchange Street
Akron, OH 44308

The Toledo Blade Company
541 N. Superior Street
Toledo, OH 43660

The (Canton) Repository
500 Market Avenue South
Canton, OH 44702

The (Cleveland) Plain Dealer
Plain Dealer Plaza
1801 Superior Avenue
Cleveland, OH 44114-2198

The Columbus Dispatch
34 South Third Street
Columbus, OH 43215

The Cincinnati Enquirer
312 Elm Street
Cincinnati, OH 45202

The Dayton Daily News
Cox Ohio Publishing Media Center
1611 South Main Street
Dayton, OH 45409

The (Youngstown) Vindicator
107 Vindicator Square
Youngstown, OH 44503

5. Rob Portman is the Republican Party's candidate for Ohio's 2010 United States Senate seat. His campaign's mailing address is: Portman for Senate, PO Box 39, Terrace Park, OH 45174.

6. Lee Fisher is the Democratic Party's candidate for Ohio's 2010 United States Senate seat. His campaign's mailing address is: Fisher for Ohio, PO Box 1418, Columbus, OH 43216.

FACTUAL ALLEGATIONS

7. On September 1, 2010, ONO and its corporate members announced that they were sponsoring a series of debates between Lee Fisher, the Democratic Party's candidate for Ohio's United States Senate seat, and Rob Portman, the Republican Party's candidate for Ohio's United States Senate seat. See U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1). The three debates are to be sponsored by ONO and its members, and all will be televised by either by independent broadcast operators or broadcast operators owned by or affiliated with ONO members. Negotiations between the major-party candidates for United States Senate in Ohio and ONO took place beginning in June 2010, see Letter from Marion H. Little, Jr. to Mark R. Brown, dated September 14, 2010 (Attachment 2) ("ONO began to put together its proposal for the instant debate in June 2010").

8. The debates negotiated by ONO, its corporate members and the Fisher and Portman campaigns have been formally scheduled to be held in Cleveland, Toledo and Columbus during the month of October 2010.

9. The first debate is scheduled to be held in Toledo, Ohio on October 4, 2010 at 7 PM at a local public high school. See Fisher and Portman spar on Oct 4 in Toledo on live television, The Toledo Blade, Sep. 8, 2010 (Attachment 3). The second debate is scheduled to be held in Cleveland on October 8, 2010, at noon at the City Cntr of Cleveland. See U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1). The third debate is scheduled to be held in Columbus on October 12, 2010 at 8 pm as a "studio debate," see U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1), with the precise location of the studio not yet announced. See Attachment 4.

10. All three debates are to be broadcast live on local television. The first and second debates in Toledo and Cleveland will be carried by ONN. See Attachment 4. The first debate in Toledo will also be carried by Toledo television station WTVG (Channel 13). See Fisher and Portman spar on Oct 4 in Toledo on live television, The Toledo Blade, Sep. 8, 2010 (Attachment 3). The third debate in Columbus will be carried by QNN and Columbus television station 10TV. See Attachment 4. According to the Columbus Dispatch, the two local television stations broadcasting the debates are "local TV partners of three of the eight newspapers sponsoring the

debates" See U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1).

11. A panel of four newspaper reporters drawn from the eight members of ONO will question the two candidates at all three debates. See U.S. Senate candidate agree to three televised debates, Columbus Dispatch, September 1, 2010 (Attachment 1). The moderator will be a journalist affiliated with one of the eight newspapers' partnering TV stations. *Id.*

12. Complainant, Dan La Botz, is duly qualified to appear on Ohio's ballot as the Socialist Party of Ohio's candidate for Ohio's United States Senate seat for the 2010 general election.

13. The Socialist Party USA, of which the Socialist Party of Ohio is a member, is a direct descendant of Eugene Debs's Socialist Party of America. Eugene Debs ran for President five times from 1900 to 1920. See RAY GINGER, *THE BENDING CROSS: A BIOGRAPHY OF EUGENE VICTOR DEBS* (1949) (recounting Debs's presidential campaigns). In 1912, Debs won 6% of the popular vote—more than 900,000 votes all told. See JAMES CRACE, *1912: WILSON, TAFT & DEBS—THE ELECTION THAT CHANGED THE COUNTRY* (2004) (describing the 1912 presidential election).

14. Historically, the Socialist Party of America has performed better in Ohio than in most other states. In 1912, for example, Debs won 8.69% of the vote (90,144 votes) in Ohio's presidential election. See 1912 Presidential General Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>). In 1920, while serving time in federal prison for protesting the Great War, Debs won 57,147 votes in Ohio, or 2.83 % of those cast for President. See 1920 Presidential Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>).¹ In 1932, Norman Thomas, running on the Socialist Party ticket, continued what Debs started by winning 64,094 votes (2.46%) in Ohio. See 1932 Presidential Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>).²

15. A significant percentage of Americans, and a large percentage of Americans living in Ohio, favor the ideas expressed by Socialist Party candidates. A Gallup Poll from February of

¹ Eugene Debs and the Socialist Party have a unique connection to the State of Ohio. Debs, after all, was arrested in Canton, Ohio for delivering a speech criticizing the war effort in 1918. See GINGER, *supra*, at 377. He was charged with espionage, lost in the Supreme Court, see *Debs v. United States*, 249 U.S. 211 (1919), and spent several years in prison. See GINGER, *supra*.

² It was largely because of Socialist successes that the Ohio legislature changed its ballot access laws to preclude minor parties. According to Richard Winger, editor of Ballot Access News, the Socialist Labor Party in 1946 surprisingly won 13,885 votes for a United States Senate seat and 11,203 votes for Governor. See Richard Winger, *Ballot Format: Must Candidates be Treated Equally?*, 45 CLEVELAND ST. L. REV. 87, 90 (1997). This development, Winger reports, did not please Ohio's legislators. *Id.* In an effort to keep Socialist candidates off the ballot and stop Henry Wallace's "progressive" campaign for President in 1948, the Ohio legislature in 1947 erased party labels from minor candidates' ballot-listings and attempted to prevent independent presidential candidates from using Ohio's petition process. *Id.* at 90-91.

2010 reports that "socialism" is viewed favorably by 36% of Americans. Pew and Rasmussen polls have produced similar results. See [http://www.gallup.com/poll/125645/socialism-viewed-positively-](http://www.gallup.com/poll/125645/socialism-viewed-positively-americans.aspx)

[americans.aspx;http://www.rasmussenreports.com/public_content/politics/general_politics/april_2009/just_53_say_capitalism_better_than_socialism;](http://www.rasmussenreports.com/public_content/politics/general_politics/april_2009/just_53_say_capitalism_better_than_socialism)
[http://pewresearch.org/pubs/1583/political-rhetoric-capitalism-socialism-militia-family-values-states-rights.](http://pewresearch.org/pubs/1583/political-rhetoric-capitalism-socialism-militia-family-values-states-rights)

16. Because of unconstitutional ballot access restrictions existing in Ohio before 2008, see *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006); *Libertarian Party of Ohio v. Brunner*, 567 F. Supp.2d 1006 (S.D. Ohio 2008), minor-party candidates, including Socialists, have been routinely and unconstitutionally prevented from running for office since the 1940s.

17. Ohio's unconstitutional exclusion of minor-party candidates for sixty-plus years from its ballots has led Ohio's primary news outlets, including the eight corporate members of ONO, to habitually and presumptively focus coverage exclusively on the two major parties. Ohio news organizations, especially those who have joined to form the ONO, have made a habit of ignoring candidates who are not affiliated with either the Democratic or Republican Parties. The first poll that even mentioned Dan La Botz (conducted by the Columbus Dispatch), for example, was not released until September 5, 2010, see Darrel Rowland, More Ohioans plan to vote for Republicans in the election, and they are excited to do so. But a lot can happen before Nov. 2, The Columbus Dispatch, Sept. 5, 2010 (Attachment 5), several months after polls focusing exclusively on Fisher and Portman began being conducted. See, e.g., http://www.rasmussenreports.com/public_content/politics/elections/election_2010/election_2010_senate_elections/ohio/toplines/toplines_ohio_senate_race_4_2010 (Rasmussen Poll). See generally http://www.realclearpolitics.com/polls/2010/senate/oh/ohio_senate_portman_vs_fisher-1069.html#polls (Real Clear Politics listing of all polls relevant to Ohio's 2010 senatorial contest).

18. The Columbus Dispatch poll described in ¶ 17 was conducted by mail between August 25, 2010 and September 3, 2010, see Rowland, *supra*, which was after ONO and its members had already decided to exclude La Botz from its scheduled debates. It could therefore not have played a part in ONO's and its members' decision to exclude Complainant.

19. ONO's and its membership's sponsorship of the debates described in ¶¶ 7-11 was negotiated exclusively with the campaigns of Respondents, Rob Portman and Lee Fisher. Complainant's campaign was never contacted about his availability. He was never notified of the negotiations with the Fisher and Portman campaigns. He was never asked by ONO, its members, or the Fisher and Portman campaigns, about his desire to be included in the debates described in ¶¶ 7-11. Notwithstanding that he is an official, recognized party candidate on the ballot in Ohio,

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ONO's and its corporate members' scheduling of the debates between the Republican and Democratic candidates for United States Senate was accomplished without the Complainant's knowledge. Complainant was never invited, was never notified, was never informed of any criteria used for deciding who would be in the debates, and was never afforded any opportunity to demonstrate that he satisfied any "pre-existing objective criteria" justifying his inclusion in the debates.

20. Complainant learned of the negotiations surrounding the debates described in ¶¶ 7-11 only because he read a news article in the July 20, 2010 issue of the Columbus Dispatch reporting that negotiations were under way. See Jonathan Riskind, Debate details lie ahead for Fisher, Portman, The Columbus Dispatch, July 20, 2010 (Attachment 6). On July 25, 2010, La Botz published a letter in the Columbus Dispatch complaining about his exclusion from the discussions. See Attachment 7. During the six weeks that followed, Complainant was not contacted by any member of the ONO about the debates.

21. On August 23, 2010, Mr. La Botz's campaign created an online petition for open and inclusive political debates. The La Botz campaign directed the petition toward the attention of Ohio's Secretary of State and asked that the Secretary of State intervene. See http://www.change.org/petitions/view/petition_for_inclusive_political_debates_in_ohio. On September 5, 2010, following the ONO's announcement that only Portman and Fisher would be included in its debates, La Botz sent a letter to the eight newspapers that make up the ONO requesting that he "be included in the debates which your organization is helping to organize." None of the recipients responded. On September 6, 2010, Mr. La Botz personally phoned Mr. Tom Caillina, editor of the Cincinnati Enquirer, and left a message regarding his exclusion from the debates. Mr. Caillina never returned the call. That same day the campaign issued a press release calling for Mr. La Botz's inclusion in the debates. None of the ONO's members responded. On September 7, 2010, La Botz's campaign launched a new online petition, this time targeting the editors of the eight newspapers comprising the Ohio Newspaper Organization. See http://www.change.org/petitions/view/petition_for_inclusive_senate_candidate_debates_in_ohio.

22. In response to this second online petition, Complainant received on September 8, 2010, a response from Mr. Bruce Winges, editor and vice-president of the Akron Beacon Journal, one of the eight corporate members of ONO. Mr. Winges admitted in an e-mail message (Attachment 8) that ONO used no pre-existing objective criteria to exclude La Botz:

The Ohio News Organization generally follows the structure used by the Commission on Presidential Debates, which allows for only the major-party candidates to debate. The logic is sound: In a television debate format, when time constraints limit the number of questions and answers to be heard, it is of the utmost importance that voters hear from the two candidates who are clearly the front-runners for the office. While we have and will continue write about third-party candidates when warranted, including them in debates

limits Ohioans' ability to hear answers from the top candidates on issues critical to the state's future.

23. Contrary to Mr. Winges's assertion, the Commission on Presidential Debates does not automatically preclude minor candidates from participating in its debates. Instead, the Commission follows "pre-existing objective criteria," that is, whether a candidate objectively polls 15% of the popular vote prior to the structuring of the debate. See *Becker v. FEC*, 230 F.3d 381, 386 (1st Cir. 2000).

24. Mr. Winges erroneously concluded that the Commission on Presidential Debates "allows for only the major-party candidates to debate" and that this approach was lawful under the FECA. Mr. Winges and the ONO likewise erroneously concluded that the ONO and its corporate members could similarly and lawfully "allow for only the major-party candidates to debate."

25. On September 10, 2010, Complainant, through legal counsel (Mr. Mark R. Brown), sent via United States Mail a letter (Attachment 9) to each of ONO's corporate members advising that the ONO's exclusive structuring of the debates violated the FECA and demanding that he (Mr. La Botz) be included in the debates. On September 14, 2010, ONO and its members responded via an electronically transmitted letter to Brown. See Attachment 2. In this letter, ONO's legal counsel (Mr. Marien Little) asserted that "ONO considered a number of *objective* criteria in determining which candidates to invite. Specifically, the ONO considered front-runner status based on then-existing Quinnipiac and party polling, fundraising reports, in addition to party affiliation." (Emphasis original).

26. Mr. Little did not in his letter explain what thresholds a qualified candidate needed to meet nor cite to any documents or information that established these alleged criteria before invitations were handed out to Portman and Fisher.

27. The alleged criteria referred to by Mr. Little in his September 14, 2010 letter had never been made known to Complainant or anyone else outside the small circle of eight ONO members and the Portman and Fisher campaigns before September 14, 2010—long after the debates had been finalized and Complainant excluded. These alleged criteria have never been made generally and/or publicly known.

28. The alleged criteria alleged by Mr. Little are not criteria within the common meaning of the word. A "criterion," according to most dictionaries, is a "standard on which a judgment or decision may be based." See, e.g., Merriam-Webster's Online Dictionary (<http://www.merriam-webster.com/dictionary/criteria>). Quinnipiac polls, party polling, and fundraising reports only constitute evidence used to satisfy whatever standard has been set. This evidence does not, and cannot, constitute the objective standard itself. The alleged evidence cannot be the criteria.

29. The evidence identified by Mr. Little is not even objective:

a. Quinnipiac polling from November 2009 through the present date has never mentioned or included the Complainant's, Mr. La Botz, name or party. See http://www.realclearpolitics.com/epolls/2010/senate/oh/ohio_senate_portman_vs_fisher-1069.html#polls (Real Clear Politics listing of all polls relevant to Ohio's 2010 senatorial contest including Quinnipiac polls). No objective observer would be able to come to any conclusion about Mr. La Botz's or the Socialist Party's popularity relative to Fisher's and Portman's by looking at these polls. The polls "push" the major candidates.

b. "Party polling" is by definition partisan and not objective.

c. "Fundraising report" is meaningless in the absence of greater specificity, including how much fundraising was required and how it weighed in the ONO's decisional calculus.

30. Complainant was never asked to supply his own party polling or fundraising reports to the ONO or any of its members. He was never invited to explain why the Quinnipiac polls were not truly objective indicators of his support. He was never contacted by the ONO or its members. He was never told what the ONO's criteria were.

31. The only arguable standards identified by Mr. Little in his September 14, 2010 letter to Mr. Brown were "front-runner" status and "party affiliation." "Front-runner" status, however, is too vague to constitute an objective criterion. "Party affiliation," likewise, is too amorphous to have any objective meaning. Moreover, the FEC has previously warned against using party affiliation as a criterion. Indeed, its sole use is impermissible under the FEC's rules.

32. On September 14, 2010, after receiving Mr. Little's electronically-transmitted letter, Mr. Brown e-mailed to Mr. Little (at his invitation) several additional questions in an effort to clarify the ONO's alleged criteria:

[Y]ou loosely cite "Quinnipiac and party polling, fundraising reports, in addition to party affiliation." Can you be more specific in terms of polling and fundraising reports?

...

Is it your position, on behalf of the ONO, that it was prepared to only invite two candidates to these debates?

...

What objective criteria did Mr. La Botz (or any other candidate) have to satisfy to be invited to the structuring of the senatorial debates or the debates themselves?

...

When were these criteria reported to the campaigns or otherwise made generally available so that qualified candidates might attempt to satisfy them?

See Attachments 11 and 12.

Mr. Brown concluded by stating that "your response does not fully resolve my client's concerns. We stand by our demand. We believe there is good cause to believe that the ONO is violating the FECA" See Attachment 11.

33. Mr. Little responded to Mr. Brown's follow-up questions via an electronically-submitted letter on September 16, 2010. See Attachment 13. Mr. Little did not answer any of the questions posed, and made it clear that there was absolutely no showing Mr. La Bontz could have made to gain an invitation to the debates. No other agent representing the ONO and its corporate members has responded to Mr. Brown's questions.

34. On September 10, 2010, Complainant sent to Mr. Portman and Mr. Fisher letters via U.S. Mail advising them that their participations in the debates organized by the ONO and its corporate members violated the FECA. See Attachment 10.

35. ONO and its members relied on no pre-existing objective criteria to justify ignoring Complainant, not inviting him, and categorically excluding him from its scheduled debates. It provided Complainant with no notice, invitation, nor opportunity to meet whatever criteria it had in place. ONO and its members summarily decided that they would invite only the two major-party candidates to the staged debates because they were the two candidates of the Democratic and Republican Parties. The two major-party candidates, Portman and Fisher, knowingly and voluntarily participated in, constructed, and accepted ONO's and its members' standards. They bargained for and accepted ONO's exclusive invitation because they anticipated political and financial gains that naturally are attached to major news organizations' (print and broadcast) exclusive coverage of campaigns and debates.

VIOLATIONS

36. The Federal Election Campaign Act (FECA) prohibits corporations from making contributions or expenditures "in connection with" any federal election. 2 U.S.C. § 441b(a). The FECA defines "contribution or expenditure" to include "any direct or indirect payment ... or gift ... to any candidate, campaign committee, or political party or organization." *Id.* § 441b(b)(2).

37. The general prohibition described in ¶ 36 is subject to three exceptions, which permit corporate funds to be used (1) for internal corporate communications; (2) for nonpartisan

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registration and get-out-the-vote campaigns by a corporation directed to its stockholders and executive and administrative personnel and their families; and (3) for the establishment of a separate segregated fund used for political purposes. *Id.* § 441b(b)(2)(A)-(C). In addition, the FECA's general definition section also addresses the term "expenditure," defining it to include any payments made "for the purpose of influencing any election for Federal office," *id.* § 431(9)(A)(i), but not to include "nonpartisan activity designed to encourage individuals to vote or to register to vote." *Id.* 431(9)(B)(ii).

38. Under the FEC's regulatory scheme, corporate contributions and expenditures may be used to defray the costs of conducting candidate debates where those debates are held by nonpartisan organizations, at least so long as those organizations and the structure of the debate meet certain criteria. Two interrelated regulations produce this result. First, 11 C.F.R. § 110.13 delineates the requirements for debate staging organizations, debate structure, and criteria for candidate selection necessary to qualify for exemption from the contribution and expenditure restrictions. Debate staging organizations must either be nonprofit organizations that "do not endorse, support, or oppose political candidates or political parties," or broadcasters that are "not owned or controlled by a political party, political committee or candidate." 11 C.F.R. § 110.13(a). Next, the candidate debate must include at least two candidates and not be structured "to promote or advance one candidate over another." 11 C.F.R. § 110.13(b). Finally, debate staging organizations are required to use "pre-established objective criteria to determine which candidates may participate in the debate" 11 C.F.R. § 110.13(c). In particular, the FEC's regulations clearly state: "For general election debates, staging organizations(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." *Id.*

39. The FEC has stated that "[s]taging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants." See *Buchanan v. Federal Election Commission*, 112 F. Supp.2d 58, 74 (D.D.C. 2000) (quoting FEC statement).

40. The court in *Buchanan v. Federal Election Commission*, 112 F. Supp.2d at 74, opined that "[t]aken together, these statements by the regulation's drafters strongly suggest that the objectivity requirement precludes debate sponsors from selecting a level of support so high that only the Democratic and Republican nominees could reasonably achieve it."

41. ONO's and its corporate members' actions violate the FECA's ban on corporate contributions and 11 C.F.R. § 110.13(c) for four independent reasons: (1) ONO and its corporate members had no "pre-established objective criteria to determine which candidates may participate in the debate;" (2) ONO and its corporate members used "nomination by a particular political party as the sole objective criterion to determine to include" Fisher and Portman in the

debates; (3) the ONO and its members structured whatever criteria they imposed "to result in the selection of certain pre-chosen participants," that is, the criteria were designed so "that only the Democratic and Republican nominees could reasonably achieve it; and (4) ONO and its corporate members kept their criteria secret and failed to disclose them to anyone outside ONO, its members, and the Portman and Fisher campaigns, thus denying to qualified candidates (including La Botz) the opportunity to meet the alleged criteria.

42. ONO and its corporate members are "broadcasters" within the meaning of 11 C.F.R. § 110.13(a)(2). ONO's members are all for-profit corporations. ONO and its corporate members benefit financially from sponsoring debates. The only permissible mechanism for ONO and its corporate members to stage debates involving federal candidates is for ONO and its corporate members to comply with the terms of 11 C.F.R. § 110.13(c). Because ONO and its corporate members have not complied with 11 C.F.R. § 110.13(a)(2), they are in violation of the FECA's ban on corporate contributions. See 2 U.S.C. § 441b(a).

43. Because the FECA prohibits "any candidate" from "knowingly ... accept[ing] or receiv[ing] any contribution prohibited by this section," 2 U.S.C. § 441b(a), Fisher and Portman are also in violation of the FECA's ban on corporate contributions. Fisher and Portman knowingly conspired with ONO and its corporate members to construct exclusive debates in violation of 11 C.F.R. § 110.13(a)(2). Complainant notified the Fisher and Portman campaigns by United States Mail on September 10, 2010 that the debates sponsored by the ONO and its corporate members violated the FECA. Still, Fisher and Portman have chosen to participate in the debates and knowingly accept the unlawful corporate contribution.

DEMAND FOR RELIEF

WHEREFORE, Complainant, Dan La Botz, respectfully requests that the Commission investigate the allegations contained in this Complaint, declare that the Respondents are in violation of the Federal Election Campaign Act and applicable FEC regulations, and impose sanctions commensurate with these violations.

DEMAND FOR EXPEDITED PROCEEDINGS AND EMERGENCY RELIEF

Complainant further requests that the Commission take whatever action it may deem necessary and appropriate to expedite its proceedings and cause emergency relief to be entered to prevent the ONO's planned debates from taking place without Complainant's participation. This includes attempting immediate conciliation under 2 U.S.C. § 437g(4)(A), instituting emergency proceedings in the United States District Court for the Southern District of Ohio in order to obtain a temporary restraining order and/or preliminary injunction prohibiting Respondents from

violating the FECA, *see* 2 U.S.C. § 437g(6)(A), and/or referring the matter to the Attorney General of the United States for immediate prosecution. *See* 2 U.S.C. § 437g(5)(C).

I swear under penalty of perjury that the allegations contained in this Complaint are, upon information and belief, true and correct.

Sworn pursuant to 18 U.S.C. § 1001.

Dan La Botz
Dan La Botz

Daniel H. La Botz

Sworn to and subscribed before me this 7th day of September, 2010

[Signature]
Notary Public

My commission expires: 02/16/2014



PETER A. SUSZKIW
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Hamilton County
My Comm. Exp. 2/16/14

Respectfully submitted,

Mark R. Brown

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Original

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Dispatch Politics

U.S. Senate candidates agree to three televised debates

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Ohio's eight largest newspapers to sponsor events

Wednesday, September 1, 2010 11:00 AM

The Columbus Dispatch

Ohio's two major-party candidates for the U.S. Senate have agreed to three, one-hour televised debates that will be hosted by the state's eight largest newspapers.

Republican Rob Portman and Democrat Lee Fisher will debate in Cleveland, Columbus and Toledo, the campaigns announced this morning. The Cleveland debate will be held Oct. 8 at the City Club of Cleveland.

Dates and locations for the Columbus and Toledo debates have not been set.

The one-hour debates will be televised by the local TV partners of three of the eight newspapers sponsoring the debates, as well as by ONN, the statewide cable news network. The City Club debate will be held before a public audience, as is tradition. The debates in Columbus and Toledo will be studio debates, without a studio audience present.

The campaigns accepted the proposal from the newspapers that a panel of four newspaper reporters pose questions at each debate, and that the debates be moderated by a journalist affiliated with one of the partnering TV stations.

The journalists will come from the staffs of the sponsoring newspapers, all members of the Ohio Newspaper Organization: *The Repository* in Canton, *The Plain Dealer* of Cleveland, *The Dispatch*, *The Cincinnati Enquirer*, *Dayton Daily News*, *The Blade* of Toledo, *Akron Beacon Journal* and *The Vindicator* of Youngstown.



FILE

U.S. Senate candidates Rob Portman, left, and Lee Fisher

DispatchPolitics

- DispatchPolitics.com
Complete coverage of Ohio politics
- The Daily Briefing
The Dispatch's public affairs team sates the appetites of political junkies with bite-sized portions of the news and what's behind it.
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Today's political news

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"Part of the mission of newspapers is to inform our communities about the public policy positions being taken by those who seek public office. By agreeing to three debates, Fishor and Portman will allow voters to hear first hand what agendas they'll pursue if elected to the U.S. Senate," said Benjamin Marison, editor of *The Dispatch*. "We're delighted to be able to help bring these debates to Ohioans and appreciative that the campaigns believe in the value in public debates."

Both candidates will appear on the Nov. 2 ballot.

The newspaper organization also will host two debates for the major-party candidates for governor. Gov. Ted Strickland, a Democrat, will debate Republican John Kasich, a former congressman, will debate Sept. 14 in Columbus at COSI and Oct. 7 in Toledo at the Driscoll Alumni Center at the University of Toledo. While the one-hour debates are closed, requiring a ticket for admission, audiences will be present.

The same format will be used for the gubernatorial debates as is being used in the senate debates.

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Article published September 08, 2010

Fisher and Portman spar Oct. 4 in Toledo on live television

By TOM TROY
BLADE POLITICS WRITER

The two major-party candidates running for Ohio's open U.S. Senate seat will take off in their first televised debate Oct. 4 in Toledo.

Republican Rob Portman and Democrat Lee Fisher agreed on the terms of three debates with representatives of the Ohio Newspaper Organization, which includes The Blade.

THE BLADE SENATE DEBATE

Toledo TV station WTVG-TV, Channel 13, will host the live debate in the auditorium of Bowdler High School, said Brian Vissering, news director. The debate will not be open to the public.

He said the debate will be offered via satellite to other Ohio TV stations.

Zoom | Photo Reprints

The one-hour event is to start at 7 p.m. and is to be moderated by Channel 13's Diane Larson. Questions will come from a panel of reporters from The Blade, Dayton Daily News, Plain Dealer of Cleveland, and the Columbus Dispatch.

Subsequent debates are set for next Oct. 8 at the Cleveland City Club and 8 p.m. Oct. 12 in Columbus, each with questions yet to be determined.

Mr. Fisher and Mr. Portman are vying for the seat held by Republican George Voinovich, who is not seeking re-election.

Mr. Fisher, a former Ohio attorney general, has been Ohio's lieutenant governor since 2007. Mr. Portman, a former Cincinnati-area congressman, is making his first statewide run for office.

RELATED STORY: Lee Fisher TV ad beats GOP rival Portman to jobs lost to China

So far, little voters have followed the campaigns mostly through news reports, Internet blogs, and television advertising.

The three live debates will give voters an opportunity to form firsthand impressions of the candidates' demeanor, grasp of the issues, and policy ideas, said Kurt Franck, executive editor of The Blade.

"It is obvious how important this area is to each of the political parties," Mr. Franck said. "Voters in northwest Ohio can really make a difference in who wins and who loses this November, and the campaigns recognize this."

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Both campaigns issued statements welcoming the opportunity to make their case in Toledo Oct. 4, as well as the debates to follow.

Holly Shuman, Mr. Fisher's press secretary, said, "Lee Fisher is excited about the opportunity to discuss his plan to create jobs at the debate in Toledo as he has been doing across the state in his Ohio Jobs First tour."

"The debate will showcase for Ohio voters a very clear contrast between Congressman Rob Portman - the economic architect of the failed Bush trade policies that shipped Ohio jobs overseas - and Lee Fisher, who has been on the ground in Ohio saving things and creating jobs."

Portman Press Secretary Jessica Tansley said, "The Portmans will present Ohioans with a clear choice between Lieutenant Governor Fisher's dishonest, negative attacks and Rob Portman's positive, pro-growth, and pro-jobs vision for the state."

"The state has suffered the loss of nearly 400,000 jobs while Lieutenant Governor Fisher was in charge of economic development. While we're sure Lieutenant Governor Fisher will continue his tired attacks on Rob, the truth is six times as many jobs have gone to other states in the last three years than have gone overseas," she said.

The sponsoring newspapers, all members of the Ohio Newspaper Organization, are The Blade, The Register in Canton, Plain Dealer of Cleveland, Columbus Dispatch, Cincinnati Enquirer, Dayton Daily News, Akron Beacon Journal, and the Vindicator of Youngstown.

The newspaper organization also will host two debates for the major-party candidates for governor.

Gov. Ted Strickland, a Democrat, and Republican John Kasich, a former congressman, are to debate Tuesday in Columbus at COSI and Oct. 7 in Toledo at the Driscoll Alumni Center at the University of Toledo. The Toledo gubernatorial debate will be broadcast live on WTOL-TV, Channel 11.

Mr. Tansley said she is happy to perform the public service of alerting the Blade's readers that though it will present coverage of the debate, Entertainment Weekly and The Insider.

"It's important, obviously. The elections are going to take on great importance. We're happy to be involved and to be a partner with The Blade in the presentation," he said.

Mr. Tansley said the large space available in the new high school's auditorium is more suitable to staging a debate than the station's studio, and is an equivalent to showcasing Toledo Public Schools.

Contact Tom Troy at
tomtroy@toledoblade.com
or 419-724-6038.

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Dispatch Politics

DISPATCH POLL RESULTS

GOP resurgent

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More Ohioans plan to vote for Republicans in the election, and they are excited to do so. But a lot can happen before Nov. 2.

Sunday, September 5, 2010 03:00 AM

BY DARREL ROWLAND

THE COLUMBUS DISPATCH

Republican candidates have grabbed double-digit leads in the races for governor and the U.S. Senate, and the swelling red tide could lead to a GOP sweep of statewide offices, the first Dispatch Poll of the 2010 campaign shows.

With voter enthusiasm running nearly three times higher among Republicans than Democrats, GOP gubernatorial candidate John Kasich leads by 12 points over Gov. Ted Strickland while GOP Senate hopeful Rob Portman tops Lt. Gov. Lee Fisher by 13 points.

"I am enthusiastic about the upcoming election because it will kick out many of the incumbents," said survey participant Aivars Vimba, 70, a retired technician from suburban Cincinnati and a Republican. "My wife, who hasn't voted in years, will vote this time."

At the other end of the state, Edward Obloy, a 62-year-old lawyer and management consultant from Toledo, said, "This is probably the single most important election in my lifetime. If the country delivers control to the Democrats again, no governor or (President Barack) Obama's accelerator will be in place and as a consequence we'll be unable to reverse course before he leaves office."

Strickland's camp conceded weeks ago that he would probably lose if Ohio still had only limited early voting. But with any eligible voter now able to get an absentee ballot, Democrats have more than 30 days starting late this month to get their less-than-enthused base out.



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Early voting could be enhanced in Democrat-rich large counties because local officials mailed applications for absentee ballots to all voters and are paying the return postage, a factor that brought a GOP federal lawsuit last week.

In theory, the political dynamics also could be transformed by the two debates between Kasich and Strickland - the first is next week - and the three matchups between Portman and Fisher.

Republican candidates lead for all down-ticket statewide offices on the Nov. 2 ballot: former U.S. Sen. Mike DeWine for attorney general, Delaware County Prosecutor Dave Yost for auditor, state Sen. Jon Husted for secretary of state, state Rep. Josh Mandel for treasurer, Justice Maureen O'Connor for chief justice and Justice Judith Ann Lanzinger for re-election.

The mail survey of 1,622 randomly chosen registered Ohio voters from Aug. 25 through Friday has a margin of sampling error of plus or minus 2.2 percentage points.

Thus when the error margin and undecided voters are taken into account, the only race that currently appears out of reach for the Democrats is chief justice, where O'Connor has a huge lead over current Chief Justice Eric Brown, appointed by Strickland last spring. No minor-party candidate got more than 5 points for any office.

Of course, polls taken before Labor Day, particularly for lower-profile races, can change dramatically, especially once TV ads hit the airwaves. That might auger well for such big-bankroll candidates as Husted and Democrat David Pepper in the auditor's race.

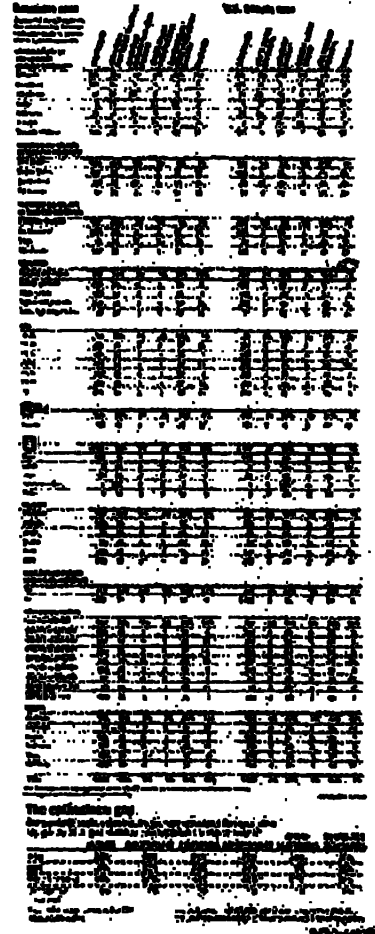
Because the campaigns for everything except governor and U.S. Senate likely have been all-but-invisible to most Ohio voters, it's presumably the Republican label that is carrying the day for now.

The supporters of every statewide GOP candidate are two to three times as likely as those who are backing the Democratic candidate to say they are more enthused than usual for this year's election.

However, that Republican advantage all but disappears in the matchup for justice and actually is reversed for chief justice; judicial candidates don't carry a party designation on the general election ballot.

The party label is key to respondent David Murray, 54, a telecommunication technician and union member from Dayton, who is voting a straight Republican ticket.

"Regretfully, this current crop of Democrats has repeatedly proven themselves, almost without exception, untrustworthy of the power associated with their offices," he said.



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If Republicans end up winning all the statewide contests, it would match the GOP "three-peat sweep" of 1994, 1998 and 2002 and return Ohio to the all-Republican rule that the state experienced from 1995 through 2006. Just four years ago, Democrats won every statewide nonjudicial race except auditor.

Such an outcome also would give the GOP control again of the state Apportionment Board, which redraws legislative districts, and thus an upper hand in General Assembly races for the next decade.

If Ohioans' sentiments favoring Republicans extend to legislative and congressional races, that could mean the GOP will retake control of the Ohio House and vulnerable first-term Democratic members of Congress such as Mary Jo Kilroy of Columbus will be knocked out of office.

Strickland won by more than 20 points over Secretary of State J. Kenneth Blackwell four years ago, but less than two-thirds of those who say they voted for the Democrat in 2006 are backing him now.

"(Former Gov. Bob) Taft was a disaster, and I wasn't happy with the way things were going under the Republicans so I voted Democratic rather than for Strickland," said one of those switching sides, Ralph Holter, 68, a retired sales representative from suburban Cleveland.

"I'm not thrilled with him either. I liked what I heard about Kasich when he was in Congress."

Strickland is certainly not without defenders.

"I chose Gov. Strickland because he has not had enough time to accomplish his goals because the national economy has been in the tank for so long. I like his plans and hope he gets four more years to implement them," said Frank Ottens, 80, a retiree from North Canton.

John McMaken, 51, a pharmacist from Mason, said, "I would be considered a Republican but am going to vote for Strickland because he has done a good, nonpartisan job, especially considering the economic climate."

But McMaken returns to his GOP roots for the Senate race because he lives in Portman's former congressional district and "he did a good job."

Dennis Stieber, 50, a deputy auditor from Norwalk, is voting for Fisher, who also was the state's development director.

"Lee Fisher was a true fighter for us here in Norwalk when our Norwalk Furniture plant closed. He came here personally to broker a deal with other investors to help keep the company in some type of solvency with new management. He kept jobs here."

drowland@dispatch.com

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Governors race

Dispatch Poll of 1,622 registered Ohio voters from Aug. 26 through Friday with a margin of sampling error of 2.2 percentage points.

OF WHICH PARTY DO YOU CONSIDER YOURSELF A MEMBER?

	RESPONDENTS	JOHN KASICH REPUBLICAN	KEN HUNTZ REPUBLICAN	MARGARET ANN LEECH LIBERTARIAN	DEWITT STUBBS DEMOCRAT	ANTHONY RIGGS GREEN	TED STICKLAND DEMOCRAT	UNDECIDED
Democrat	608	9%	1%	0%	80%	10%		
Republican	637	90	1	1	3	5		
Constitution	14	86	14	0	0	0		
Green	9	11		67	22	0		
Libertarian	21	14	78	0	5	5		
Socialist	2	0	0	50	50	0		
No party affiliation	294	51	4	3	23	19		

FOR WHOM DID YOU VOTE IN 2008 FOR PRESIDENT?

John McCain	788	85%	2%	1%	5%	7%		
Barack Obama	701	13	2	1	73	12		
Someone else	50	34	18	8	10	30		
Did not vote	39	33	3	0	51	13		

FOR WHOM DID YOU VOTE IN 2008 FOR GOVERNOR

J. Kenneth Blackwell	547	90%	1%	1%	3%	5%		
Ted Sticksland	820	23	2	1	62	11		
Other	71	44	10	6	10	31		
Did not vote	129	53	5	1	31	9		

EDUCATION

Postgraduate degree	305	51%	3%	1%	36%	10%		
College graduates	459	58	2	1	33	8		
Some college	423	52	3	2	35	9		
High-school graduate	344	44	3	1	38	13		
Some high school or less	49	12	4	2	68	18		

AGE

18-24	56	38%	4%	2%	55%	4%		
25-34	104	47	5	2	37	10		
35-44	180	52	3	3	33	9		
45-54	310	51	3	1	23	13		
55-64	392	49	4	1	37	9		
65-74	308	51	1	1	37	10		
75+	241	52	0	1	35	11		

GENDER

Male	825	54%	3%	1%	34%	8%		
Female	786	46	2	2	39	12		

RACE

White	1,381	55%	3%	1%	31%	10%		
Black	143	9	1	1	81	8		
Latino	5	60	0	0	46	0		
Asian	50	40	2	8	42	8		
American Indian	1	100	0	0	0	0		
Other	2	50	0	0	50	0		

RELIGION

U.S. Senate race

	RESPONDENTS	ERIC H. BENTON CONSTITUTION	LEE FORHER DEMOCRAT	DANIEL H. LABOTZ SOCIALIST	ROB PORTMAN REPUBLICAN	UNDECIDED
Democrat	602	0%	83%	0%	8%	8%
Republican	634	2	3	0	92	3
Constitution	14	43	0	0	57	0
Green	9	0	22	44	0	33
Libertarian	21	33	10	10	48	0
Socialist	2	0	50	50	0	0
No party affiliation	291	4	23	1	52	21

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Dispatch Politics

Debate details lie ahead for Fisher, Portman

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Tuesday, July 20, 2010 07:18 AM

BY JONATHAN RISKIND

The Columbus Dispatch

Let the debate over debates begin!

Democratic Lt. Gov. Lee Fisher's U.S. Senate campaign yesterday challenged his GOP rival to seven debates, beginning in early August, to be held at agreed-upon locations in Cleveland, Columbus, Cincinnati, Toledo, Youngstown, Dayton and southeastern Ohio.

Jessica Towhey, spokeswoman for Rob Portman's campaign, said, "Of course there will be debates. We look forward to a series of debates, and we'll be in touch with Lt. Gov. Fisher's campaign to work out the details."

It's no surprise that Fisher, Ohio lieutenant governor, is first out of the box with the debate challenge. The candidate who logs in campaign cash often is the most eager to face off in as many debates as possible.

Fisher reported \$1.3 million on hand as of the end of the year's second quarter, compared with Portman's \$8.8 million. Portman already has been on the air statewide with two television ads, while Fisher has yet to run his first general-election spot.

In a letter to Portman, Fisher says, "While you and I have proposed vastly different plans to get our economy moving forward again, we both have a responsibility to share our plans for creating jobs directly with Ohioans."

Portman, a former congressman from Cincinnati and budget director and trade representative for President George W. Bush, helped Bush in 2000 and Vice President Cheney in 2000 and 2004 prepare for debates by standing in for their Democratic rivals.

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- Democrats fracturing over tax cuts
- Blagojevich asks judge to nullify lone conviction

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Portman did the same for Republican presidential candidate John McCain in 2008, assuming the role of now-President Barack Obama during McCain's debate preparations.

jriskind@dispatch.com

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The Columbus Dispatch

Debates ought to include all candidates

Sunday, July 25, 2010 03:02 AM

Tuesday's *Dispatch* article "Debate details lie ahead for Fisher, Portman" neglected to mention that Rob Portman and Lee Fisher are not the only U.S. Senate candidates. One of the big debates surrounding the debates is the right of the public to hear from candidates, such as myself, who are not from the two major parties.

Often, only the corporate parties, the Republicans and Democrats, get a hearing, even though Americans are increasingly fed up with them. Three recent polls — Rasmussen, Gallup and Pew — suggest that about one-third of the American people are sympathetic to socialism. Yet the Socialist, Green and other parties seldom are included in the debates.

Shouldn't the American public have the right to hear from all of the candidates? And shouldn't *The Dispatch* make it a point to inform the public about the range of candidates, parties and platforms?

I am eager to debate the other candidates. I think Ohioans want to hear all of the alternatives.


DAN La BOTZ

Ohio Socialist Party

Candidate for U.S. Senate

Cincinnati

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